

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER 00-0117**  
**RESPONSIBLE OFFICER**  
**SALES TAX and WITHHOLDING TAX**  
**For Tax Periods: 1995**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning specific issues.

**Issues**

**1. SALES TAX-Responsible Officer Liability**

**Authority:** IC 6-2.5-9-3, IC 6-8.1-5-1 (b), Indiana Department of Revenue v. Safayan 654 N.E. 2nd 270 (Ind.1995).

Taxpayer protests the assessment of responsible officer liability for unpaid sales taxes.

**2. WITHHOLDING TAX-Responsible Officer Liability**

**Authority:** IC 6-3-4-8 (f), IC 6-8.1-5-1 (b), Indiana Department of Revenue v. Safayan 654 N.E. 2nd 270 (Ind.1995).

Taxpayer protests the assessment of responsible officer liability for unpaid withholding taxes.

**Statement of Facts**

Taxpayer was an officer of a corporation which did not remit the proper amount of sales taxes and withholding taxes to Indiana. Taxpayer was personally assessed for the taxes and protested this assessment. Taxpayer paid the liability. More facts will be provided as necessary.

## **1. SALES TAX-Responsible Officer Liability**

### **Discussion**

The proposed sales tax liability was issued under authority of IC 6-2.5-9-3 which provides as follows:

An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
- (2) has a duty to remit state gross retail or use taxes to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

The Indiana Department of Revenue Business Tax Application, Indiana Annual Report of Business Corporation and 1993-94 Indiana Department of Revenue S Corporation Return all indicate that Taxpayer was secretary-treasurer of the corporation. As secretary-treasurer she meets the first requirement of being an officer of the corporation. The issue to be determined is whether or not she has the statutory duty to remit the sales taxes. Taxpayer has the burden of proving that she did not have the statutory duty to see that the taxes are properly remitted to Indiana. IC 6-8.1-5-1 (b).

Pursuant to Indiana Department of Revenue v. Safayan 654 N.E. 2nd 270 (Ind.1995) at page 273: "The statutory duty to remit trust taxes falls on any officer or employee who has the authority to see that they are paid." The duties of a secretary-treasurer of a corporation commonly include responsibility for maintaining the corporation's books and accounts, reviewing liabilities, determining which liabilities will be satisfied and writing checks to satisfy said liabilities. The officer with such job responsibilities would have the statutory duty to remit the taxes to the state.

### **Finding**

Taxpayer's protest is denied.

## **2. WITHHOLDING TAX-Responsible Officer Liability**

### **Discussion**

The proposed withholding taxes were assessed against Taxpayer pursuant to IC 6-3-4-8(f), which provides that "In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest." The issue to be determined is whether or not Taxpayer was under a duty to remit the corporate withholding taxes to the state.

Taxpayer was the secretary-treasurer of the corporation. Pursuant to Indiana Department of Revenue v. Safayan 654 N.E. 2nd 270 (Ind.1995) at page 273: "The statutory duty to remit trust taxes falls on any officer or employee who has the authority to see that they are paid. " The duties of a secretary-treasurer of a corporation commonly include responsibility for maintaining the corporation's books and accounts, reviewing liabilities, determining which liabilities will be satisfied and writing checks to satisfy said liabilities. The officer with such job responsibilities would have the statutory duty to remit the withholding taxes to the state.

### **Finding**

Taxpayer's protest is denied.